

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CJS 14-05 Pub. Rec./Security of Confidential Personal Information

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: PCB CJS 14-04 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Cary	Bond

SUMMARY ANALYSIS

The Proposed Committee Bill (PCB) creates a public records exemption relating to the Florida Information Protection Act of 2014 (Act). The notice and information held by the Department of Legal Affairs (DLA) pursuant to an investigation of a violation of the Act is generally confidential and exempt from a public records request.

The PCB also contains a Legislative finding that it is a public necessity that the notice and information held by the DLA is confidential and exempt because notices may contain proprietary information about the security of breached systems, the release of which could result in the identification of vulnerabilities and further data breaches; and because notices provided to the DLA may contain personal information.

The PCB contains a sunset provision and will be repealed on October 2, 2019 unless it is reenacted.

The PCB provides a statement of public necessity as required by the State Constitution.

The PCB provides that the exemption will take effect on the same date as PCB CJS 14-04 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The PCB creates a public record exemption for certain information related to the investigation of a violation of the Florida Information and Protection Act of 2014; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. An exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Confidential versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.² If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.³ Also, if the information is deemed to be confidential it may only be released to those person and entities designated in the statute.⁴ However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.⁵

Effect of the PCB

The Proposed Committee Bill (PCB) creates s. 501.170(11), F.S., to provide a public records exemption relating to the Florida Information Protection Act of 2014 (Act).⁶ The Act requires commercial entities and certain government agencies to provide notice to the Department of Legal Affairs (DLA) in the event of a security breach. The information in the notice may contain protected information, such as:

- Social security number;
- Driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;

¹ Art I., s. 24(c), Fla.Const.

² *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004).

³ *Id.*

⁴ *Id.*

⁵ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

⁶ The Act is created by the tied bill, PCB CJS 14-04.

- Financial account number or credit or debit card number, in combination with any required security code, access, code, or password that is necessary to permit access to an individual's financial account;
- Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional;
- An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; and
- Any other information from or about an individual that could be used to personally identify that person.

The report also may contain information about system vulnerabilities that led to the security breach.

The PCB provides that the notice and information held by the DLA pursuant to an investigation of a violation of the Act is generally confidential and exempt from a public records request. However, confidential and exempt information may be disclosed by the DLA in the performance of its official duties and responsibilities to a court or tribunal, a law enforcement agency, or another state or federal agency. Unless otherwise protected by law, confidential and exempt information is no longer confidential and exempt 5 years after the DLA either files its own action or closes its investigation.

The PCB also contains a Legislative finding that it is a public necessity that the notice and information held by the DLA is confidential and exempt because (1) notices may contain proprietary information about the security of breached systems, the release of which could result in the identification of vulnerabilities and further data breaches; and (2) notices provided to the DLA may contain personal information.

The PBC contains a sunset provision and will be repealed on October 2, 2019 unless it is reenacted.

B. SECTION DIRECTORY:

Section 1 amends s. 744.3701, F.S., regarding confidentiality.

Section 2 provides a public necessity statement.

Section 3 provides for an effective date to coincide with passage of Proposed Committee Bill CJS 14-04, if adopted in the same legislative session.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The PCB does not appear to have any impact on state revenues.

2. Expenditures:

The PCB does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The PCB does not appear to have any impact on local government revenues.

2. Expenditures:

The PCB does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCB does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Like any other public records exemption, the PCB may lead to a minimal fiscal impact on the affected portions of the government, in this case, the Department of Legal Affairs (DLA). Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and the DLA may incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the DLA.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The PCB does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The PCB expands a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The PCB expands a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The PCB creates a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The PCB does not appear to create a need for executive branch rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a